

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.764 OF 2006

Santa Saswad Maratha Mandal Saswad
Through Panch

1. Shri.Madhavrao Pandharinath Jagtap & Ors. ...Appellants

V/s.

Sou. Promodini Vijaysinha Chavan & Anr. ...Respondents

Mr.Shriram S. Kulkarni for Appellants.

Mr.S.B. Deshmukh for Respondent No.1

CORAM : V.M. KANADE, J.

DATED : 24th JULY, 2007.

P.C:-

1. Heard learned counsel for the Appellants and learned counsel for the Respondent No.1.

2. The Appellants/Orig.Plaintiffs claiming to be an association had filed suit through its five members who are termed as panchas. In the said suit, the Appellants/Orig.Plaintiffs prayed for an order of injunction restraining Respondents/Defendants from obstructing/disturbing possession of Appellants and from carrying out any construction in the said property. The Trial Court decreed the said suit. The lower Appellate Court however, dismissed the suit on the ground that it was not maintainable

since the Association was an un-registered Association and further, held that no leave under Order 1 Rule 8 of C.P.C. had been obtained by the Appellants before filing the suit.

3. Learned counsel for the Appellants submitted that even an un-registered Association has a right to file a suit and in view of provisions of Section 31, a suit could be filed before making an application for registration. He relied on the judgment of this Court in the case of Mrs. Jankibai Prahladrai Brijlal Seksaria V/s. Kashinath Raghunath Kelkar & ors. Reported in AIR 1972 Bombay 199(V 59 C 41). He invited my attention to the para No.17 of the Judgment which reads as under.

"In the view I have taken, the learned Judge was in error in taking the view that the suit of the plaintiffs did fall within the purview of Section 50 and the bar under Section 80 of the Bombay Public Trusts Act could not consequently arise. But even though I have taken the view that the suit under Section 50 is not competent, it seems to me that it would hardly be in the interest of justice to throw away the suit on the basis of this finding. The suit has been instituted by the trustees in respect of property alleged to be of the ownership of the Trust as far back as 30-1-1960 and now in 1971 it would hardly be fair to dismiss the suit and drive the plaintiffs to a

separate proceeding under Sections 18, 19 and 22 of the Bombay public Trusts Act. The fairest course in this case would, I think be to direct that the proceedings of this suit shall be stayed and in the meantime the plaintiffs would approach the charity authorities to obtain a declaration under Section 22-A that the properties in suit belong to the Trust made by the late Bhagoji keer. In this connection, it may be useful to note the provisions of Section 31(1) of the Bombay Public Trusts Act, 1950. That sub-Section only says:-

"No suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any Court".

The bar, therefore, is to the suit being heard and decided and not to the suit being instituted. In the present case so far as certain properties are concerned, they are not registered as properties belonging to the Trust and as soon as that defect is overcome, the bar under Section 31(1) would no longer arise. It is to be hoped that after the plaintiffs approach the charity authorities they would deal with the matter as expeditiously as possible."

4. He submitted that in view of the ratio of the judgment in the said case, suit was maintainable. He further, submitted that the lower Appellate Court, on the other hand, could have permitted the Appellants to cure the defect by remanding the matter back to the Trial Court so that the

Appellants could have obtained leave under Order 1 Rule 8.

5. Learned counsel for the Respondents, on the other hand, submitted that suit was filed for and on behalf of the Association which was not registered under the Societies Registration Act or Bombay Public Trust Act and as such question of obtaining leave under Order 1 Rule 8 of C.P.C. did not arise.

6. In my view, ratio of judgment in the case of Mrs. Jankibai V/s. Kashinath(supra) will not apply to the facts of the present case. It has been observed in the said judgment that in stead of dismissing the suit on the ground of non-registration, it would be proper to direct that proceedings in the suit should be stayed in order to enable the Plaintiff to approach the Charity Authorities to obtain declaration U/s.22-A. In the present case, it is an admitted position that by conveyance deed which was executed in 1944, this property was conveyed in favour of said Mandal and further after the conveyance was executed, no steps have been taken till this date to get said Mandal registered either under the Societies Registration Act or Bombay Public Trust Act. Under these circumstances, ratio of the said judgment will not apply to the facts of the present case.

7. Secondly, since the suit has been filed on behalf of the Association and averments made specifically to that effect in the plaint, question of seeking leave under Order 1 Rule 8 of C.P.C. does not arise. In any event, on account of non-registration of the Association, suit is not maintainable. There is no reason to interfere with the finding recorded by the Lower Appellate Court.

8. It is clarified that the Appellants may take out an appropriate proceeding for getting the association registered under the relevant Societies Registration Act or Bombay Public Trust Act and thereafter, it would be open for them to agitate the issues which are raised in this suit. With these observations, Second Appeal is dismissed. In view of dismissal of Second Appeal, nothing survives in the Civil Application. Civil Application is disposed of accordingly.

V.M. KANADE, J.